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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LUIS A. ROVIRA

Appeal 2009-006470
Application 09/847,625
Technology Center 2400

Before ROBERT E. NAPPI, KENNETH W. HAIRSTON, and MAHSHID D. SAADAT, *Administrative Patent Judges*.

HAIRSTON, *Administrative Patent Judge*.

DECISION ON APPEAL[1]

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[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1 to 25 and 27 to 36. Claim 26 has been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Appellant's invention is concerned with television and broadcasting systems, and specifically to video-on-demand (VOD) systems employing set-top-boxes and electronic/interactive program guides for use in such systems (Abs.; Spec. 1:1-15; Figs. 3, 4, and 5).

Claim 1, reproduced below, is illustrative of the subject matter on appeal:

1. A method for providing media services via an interactive media services client device coupled to a programmable media services server device, said method comprising:

providing a user with an interactive program guide (IPG), the IPG including a television program schedule with a plurality of scheduled programs, the plurality of scheduled programs including at least one currently scheduled television program, said currently scheduled television program being scheduled for broadcast to a plurality of users at a predetermined current time, and at least one scheduled future television program, said scheduled future television program being otherwise available only via a scheduled broadcast to a plurality of users at a predetermined later time, said IPG being configured to provide a user option to highlight at least one scheduled program in the television program schedule;

in response to a user highlighting said scheduled future television program, providing said user with an option to view the highlighted scheduled future television program at a user-defined time;

receiving user input requesting said scheduled future television program for display at a user-defined time, wherein said user-defined time is prior to said later time, and wherein said user input requesting said

scheduled future television program for display at a user- defined time includes a request for beginning a display of the scheduled future television program at a time when said scheduled future television program is not scheduled to begin broadcasting to a plurality of users; and

providing said user with said scheduled future television program at said user-defined time.

The Examiner relies upon the following as evidence of unpatentability:

Kostreski	US 5,534,912	July 9, 1996
Ganek	US 5,682,597	Oct. 28, 1997
Girard	US 5,751,282	May 12, 1998
Matthews, III	US 5,815,145	Sep. 29, 1998
Imajima	US 6,211,901 B1	Apr. 3, 2001
LaJoie	US 6,772,433 B1	Aug. 3, 2004
		(filed Nov. 3, 1998)
Ellis	WO 99/60790	Nov. 25, 1999

Humphrey, *The Stranger.com*, I Love Television, VOL. 10 NO. 21, pp. 1-3 (Feb. 8-14, 2001) (found at http://thestranger.com/2001-02-08/love_tv.html) (hereinafter, "thestranger.com")

The following obviousness rejections are before us for review:

(i) Claims 1, 3, 4, 7, 8, 10 to 12, 18 to 21, 25, 28, 29, 35, and 36 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Ellis, thestranger.com, LaJoie, and Imajima.

(ii) Claims 2 and 22 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Ellis, thestranger.com, LaJoie, and Imajima, and further in view of Kostreski.

(iii) Claims 5, 6, 23, and 24 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Ellis, thestranger.com, LaJoie, and Imajima, and further in view of Matthews, III.[2]

(iv) Claims 9, 15 to 17, 27, and 32 to 34 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Ellis, thestranger.com, LaJoie, and Imajima, and further in view of Girard.

(v) Claims 13, 14, 30, and 31 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Ellis, thestranger.com, LaJoie, and Imajima, and further in view of Ganek.[3]

With regard to independent claims 1, 19, and 36, Appellant contends *inter alia* (App. Br. 5-19; Reply Br. 2-15) that the combination of Ellis, thestranger.com, LaJoie, and Imajima fails to teach or suggest IPG including a currently scheduled television program scheduled for broadcast to plural users at a predetermined current time, and a future scheduled television program scheduled to be broadcast to plural users at a predetermined later time, and allowing a user to select and view the future scheduled television program at a user-defined time which is prior to the predetermined later time (*see* App. Br. 9, 12-13, and 16).

Appellant argues (Reply Br. 3-4) that Ellis, and specifically Figures 6A through 8 therein, fails to disclose, teach, or suggest an IPG that includes current and future programs, where the currently scheduled television

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[2] The Examiner inadvertently failed to include Matthews, III in the "Evidence Relied Upon" section of the Answer (*see* Ans. 2-3).
[3] The Examiner inadvertently refers to the Ganek reference as "Gordon" in the Answer (*see* Ans. pp. 3, 13, and 14). Based on the USPN 5,682,597 listing Ganek and not Gordon as the first inventor, we consider this to be harmless error for purposes of this appeal.

programs are scheduled for broadcast to plural users at a predetermined current time, and the future scheduled television programs are otherwise available only via a scheduled broadcast to a plurality of users at a later time.

ISSUES

Based on Appellant's arguments, the issues are:

Do the combinations of the references used in the Examiner's rejections disclose or suggest an IPG including a currently scheduled television program scheduled for broadcast to plural users at a predetermined current time, and a future scheduled television program?

Do the combinations of the references used in the Examiner's rejections disclose or suggest providing NVOD and FVOD programs (i.e., future scheduled television programs broadcast to plural users) to a user to allow for immediate viewing by the user (i.e., at a user-defined time)?

FINDINGS OF FACT

1. Ellis describes an IPG including listings for current scheduled television programs, future scheduled television programs, and VOD programs (p. 13, ll. 7-32). Ellis also describes a set-top-box (STB) for implementing the IPG (p. 15, ll. 17-27 and p. 16, ll. 10-22).
2. LaJoie describes an IPG 338 and set-top-box 6 (Figs.1 and 3) for highlighting and selecting scheduled programs for display at a user's location, including NVOD programming, IPPV programming, and VOD programming (Abs.; Figs. 10-18 and 25-32; col. 23, l. 58 to col. 25, l. 29; col. 32, l. 65 to col. 33, l. 51).

3. Imajima describes allowing a user to select a program that is to be broadcast at a regularly scheduled future time via a near-video-on-demand (NVOD) service (Fig. 5, col. 1, ll. 35-40), and to request the program to be viewed immediately at a user-defined time using a full-video-on-demand (FVOD) service (Fig. 7, col. 1, ll. 35-45). Imajima provides allowing a user to view FVOD programs immediately without having to wait for the next NVOD program (col. 1, ll. 6-51).

ANALYSIS

The Examiner has established a factual basis, as well as provided articulated reasoning that possesses a rational underpinning, to support the legal conclusion of obviousness (Ans. 3-19). *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006); *In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). Because Appellant has not persuaded us of error in the Examiner's rejections, and for the reasons that follow, we will sustain all of the obviousness rejections before us on appeal. *See Kahn*, 441 F.3d at 985-86.

Appellant has not persuasively rebutted the Examiner's conclusion that it would have been obvious to combine the teachings of Ellis, thestranger.com, LaJoie, and Imajima. We agree with the Examiner (Ans. 3, 15-16) that Ellis discloses an IPG that displays television program listings as well as VOD listings including data for current programs, future programs, and VOD programs (*see* Ellis at Fig. 2; p. 13, ll. 7-32; FF 1). As indicated *supra*, Appellant's main line of argument (Reply Br. 3-4) is that Ellis, and specifically Figures 6A through 8 therein, fails to disclose, teach, or suggest an IPG that includes current and future programs, where the currently

scheduled television programs are scheduled for broadcast to plural users at a predetermined current time, and the future scheduled television programs are otherwise available only via a scheduled broadcast to a plurality of users at a later time. However, we agree with the Examiner that Ellis (*see* page 13 therein) discloses and suggests an IPG including current and future programs, as well as VOD programs (FF 1). Thus, Appellant's arguments directed to the first issue have not persuaded us of error in the Examiner's rejection.

We also agree with the Examiner (Ans. 5 and 17-18) that LaJoie discloses an IPG system in which a user may *highlight* a scheduled pay-per-view (PV) or impulse-pay-per-view (IPPV) program to display information about the highlighted program and allow the user to proceed with an option step (col. 24, ll. 1-28; col. 24, l. 48 to col. 25, l. 28; Figs. 13, 18, and 25 -32; FF 2). Lastly, we agree with the Examiner (Ans. 6 and 18-19) that Imajima discloses allowing a user to select a program that is to be broadcast at a regularly scheduled future time via a near-video-on-demand (NVOD) service (Fig. 5, col. 1, ll. 35-40), or to request the program to be viewed immediately at a user-defined time using a full-video-on-demand (FVOD) service (Fig. 7, col. 1, ll. 35-45; FF 3), thus allowing a user to view FVOD programs immediately without having to wait for the next NVOD program (col. 1, ll. 6-51; FF 3).

Appellant has not convinced us that the Examiner erred in finding that Imajima discloses that "NVOD programs are broadcasted on a regularly scheduled broadcast, and by the user electing to start the program immediately without waiting for the next NVOD broadcast, the user has sent input requesting a program at a user defined time (current time) which is not

a scheduled future television time" (*see* Ans. 19). One of ordinary skill in the art would understand that an NVOD program is broadcast to plural users at an established time in the future since NVOD technology is a time shift service that broadcasts a show on plural channels at predetermined time intervals (Imajima at col. 1, ll. 45-51). Thus Appellant's arguments directed to the second issue have not persuaded us of error in the Examiner's rejection.

For all of the above reasons, Appellant's arguments have not persuaded us of error in the Examiner's rejections of claims 1, 19, and 36 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Ellis, thestranger.com, LaJoie, and Imajima. In view of the foregoing, we will sustain the Examiner's rejections of independents claim 1, 19, and 36.

Appellant does not separately argue with particularity the of dependent claims 3, 4, 7, 8, 10 to 12, 18, 20, 21, 25, 28, 29, and 35 which depend respectively from claims 1 and 19, apart from merely asserting that these claims recite further features that are not taught or suggested by cited prior art (App. Br. 19). Such conclusory assertions without supporting explanation or analysis particularly pointing out errors in the Examiner's reasoning fall well short of persuasively rebutting the Examiner's prima facie case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). We therefore sustain the Examiner's rejection of claims 3, 4, 7, 8, 10 to 12, 18, 20, 21, 25, 28, 29, and 35 for the reasons indicated previously with regard to claims 1, 19, and 36.

Finally, with respect to the obviousness rejections (*see* rejections (ii)-(v) listed *supra*) of dependent claims 2, 5, 6, 9, 13 to 17, 22 to 24, 27, and 30 to 34 which depend from respective ones of independent claims 1 and 19,

Appellant has not disputed the merits of the obviousness rejections of these claims at all. Accordingly, we will sustain the obviousness rejections of claims 2, 5, 6, 9, 13 to 17, 22 to 24, 27, and 30 to 34 for similar reasons provided *supra* with regard to the rejection of claims 1, 19, and 36 and because Appellant has failed to rebut the Examiner's prima facie case of obviousness. *See* 37 C.F.R. § 41.37(c)(1)(vii) (requiring a statement in the briefs as to each ground of rejection presented by Appellant for review); 37 C.F.R. § 41.37(c)(1)(vii) (stating that arguments not presented in the briefs by Appellants will be refused consideration).

CONCLUSIONS OF LAW

The combinations of the references used in the Examiner's rejections disclose or suggest an IPG including a currently scheduled television program scheduled for broadcast to plural users at a predetermined current time, and a future scheduled television program.

The combinations of the references used in the Examiner's rejections disclose providing NVOD and FVOD programs (i.e., future scheduled television programs broadcast to plural users) to a user to allow for immediate viewing by the user (i.e., at a user-defined time).

Ellis, thestranger.com, LaJoie, and Imajima taken in combination disclose or suggest the recited invention as set forth in claims 1, 19, and 36.

ORDER

We affirm the Examiner's obviousness rejections of claims 1 to 25 and 27 to 36 under § 103(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(v).

AFFIRMED

KIS

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